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No. 82-2124

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

WILSON ARCHER, ET AL.,

Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, ET AL.,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

MOTION TO DISMISS

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ON APPEAL FROM THE COURT OF APPEALS FOR
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MOTION TO DISMISS

METROPOLITAN TRANSIT AUTHORITY ("METRO") moves to dismiss the Appeal of Appellants Wilson Archer, et al., pursuant to Sup. Ct. R. 16.1(a) & 16.1(b). As shown below, this appeal has not been taken in conformity with Sup. Ct. R. 15.1(j)(ii) and should be dismissed pursuant to Sup. Ct. R. 16.1(a). Furthermore, this appeal does not present a substantial federal question, and attempts to raise one claim that was not timely or properly asserted below and was not expressly passed on below. Accordingly, this appeal should be dismissed pursuant to Sup. Ct. R. 16.1(b).

STATEMENT OF THE CASE

Appellants have challenged, under the equal protection clause of the fourteenth amendment to the Constitution of the United States, the election which confirmed the creation of METRO and authorized it to levy a 1% sales tax. All resident voters of the City of Houston ("Houston"), the City of Humble ("Humble"), and several other cities within the perimeter of the outer boundaries of Houston voted as a single election unit, as

required by Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(f)(1) (Vernon Supp. 1982). This unit comprised the principal election unit. The statute requires that a majority of voters in the election unit which includes the principal city approve the creation of a transit authority. *Id.* § 5(g). The principal city in the METRO District is Houston. *Id.* § 2(b).

There was no weighting given to any votes in that unit. Every resident voter had a single vote, regardless of where he resided in the election unit. The individual appellants in this case participated in that election, and their votes were given the same weight as those of other voters in the unit. By a margin of approximately 16,000 votes, the voters in this principal election unit approved the creation of METRO and authorized the levy of a 1% sales tax.

In addition to the principal election unit described above, Article 1118x provided that municipalities outside the perimeter of Houston which participated in the election voted as separate election units. *Id.* § 5(f)(3). Similarly, each of five unincorporated areas in Harris County, Texas, voted as separate units. *Id.* § 5(f)(2). Those units in which a majority of voters approved the creation of METRO were included in the METRO District. *Id.* § 5(g).

The Board of Directors of METRO ("the METRO Board") is appointed by the mayor of Houston, the mayors of other incorporated cities in the district, and by the Commissioners' Court of Harris County. *Id.* § 6B.

COMPLIANCE WITH RULES OF THE SUPREME COURT

The Rules of this Court provide that copies of Findings of Fact and Conclusions of Law rendered by courts in the case shall be submitted as an appendix to the Jurisdictional Statement. Sup. Ct. R. 15.1(j)(ii). Appellants failed to comply with this requirement. The trial court in this case rendered extensive

Findings of Fact and Conclusions of Law, which are provided herein as Appendices A and B.

Rather than submit the findings of the court which heard this case, Appellants have simply alleged in their Jurisdictional Statement numerous facts which are not supported in the record or, in some cases, inconsistent with the findings and record. For example, on page 8 Appellants state that "Houston completely surrounds the cities of Jacinto City and Galena Park." Finding of Fact No. 20 of the trial court states as follows:

> Cities of Jacinto City and Galena Park are not wholly located within the perimeter of the outer boundary of the City of Houston.

Similarly, Appellants have attached several maps to their Jurisdictional Statement which are not in the record. Further, there are discrepancies in the coloring of the maps between the three (3) copies which have been provided to counsel for METRO. The maps in the Jurisdictional Statement submitted to counsel for METRO are neither accurate, in the record, nor supported by the record.

The failure of Appellants to provide the detailed findings of the trial court is a violation of Sup. Ct. R. 15(j)(ii). Appellants' substitution of outside-the-record statements and maps in lieu of Findings of Fact and Conclusions of Law of the trial court justify dismissal under Sup. Ct. R. 16.1(a).

NO SUBSTANTIAL FEDERAL QUESTIONS ARE PRESENTED

Appellants have alleged several claims under the equal protection clause of the fourteenth amendment. A review of those claims reveals that Appellants' claims do not present a substantial federal question. The issues raised have been decided previously by decisions of this Court. Accordingly this appeal should be dismissed pursuant to Sup. Ct. R. 16.1(b).

A. The City of Humble has No Equal Protection Claim

Article 1118x requires that Houston and all its enclave cities (those cities surrounded by the outer boundaries of Houston) vote as a single voting unit. Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(f)(1) (Vernon Supp. 1982). It is undisputed that Humble is an enclave city. It is also undisputed that no Humble voter was denied the right to vote, nor was there any weighting of the votes cast. Appellants' claim is simply that there are fewer voters in Humble than in Houston, and that as a result, the votes of the residents of Humble were diluted.

The rights asserted by Appellants are not individual rights, but rights which they allegedly obtain as residents of a municipality. They assert that because they reside in a municipality other than Houston, the United States Constitution grants them an affirmative right to vote as a unit separate from residents of Houston. There is no assertion, nor could one reasonably be made, that the residents of Houston were denied their equal protection rights as a result of this voting structure. Yet the residents of Humble, living across the street from some of their Houston neighbors, claim that by reason of a municipal boundary they have some constitutional entitlement to vote as a separate entity. The Supreme Court has never recognized such a right.

The equal protection clause by its very terms protects the right of "persons", not political subdivisions. *McGowan* v. *Maryland*, 366 U.S. 420, 427 (1961). The Supreme Court in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 29 n.66 (1973) stated that "this Court has never questioned the State's power to draw reasonable distinctions between political subdivisions within its borders." *See also Salsburg* v. *Maryland*, 346 U.S. 545, 552 (1954).

The fact that the election structure in Article 1118x provides that certain municipalities vote as separate units while others vote in a multi-city unit does not invalidate the statute. In

McGowan v. *Maryland*, this Court stated that, "the Equal Protection clause relates to equality between persons as such, rather than between areas and . . . territorial uniformity is not a constitutional prerequisite." 346 U.S. at 427. As noted above, individual voters in Humble were treated the same as individual voters in Houston in the 1979 election which created METRO.

Appellants claim that the Constitution requires that Humble be treated like a non-enclave city. The Supreme Court has repeatedly stated, however, that legislation which treats various political subdivisions of a state differently is not to be held unconstitutional if "any state of facts reasonably may be conceived to justify" the system. *Holt Civic Club* v. *City of Tuscaloosa*, 439 U.S. 60, 74 (1978). The inclusion of enclave cities such as Humble within the primary voting unit easily passes constitutional muster under this test.

B. The "Rational Basis" Test, and Not the "Strict Scrutiny" Test, Is the Proper Standard for Judicial Review of the Voting Unit Classifications Established by Article 1118x.

An analysis of any claim of violation of equal protection necessarily begins with an examination of the classifications created by legislative action and a realization that the exercise of the legislative function invariably and inevitably affects some people differently than others. Legislative classifications generally will not be struck down merely because they are imperfect or imprecise. *New York City Transit Authority* v. *Beazer*, 440 U.S. 568, 592 (1979); *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 314 (1976); *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970). Further, state laws are entitled to a presumption of validity when attacked on the basis of the equal protection clause. *Parham* v. *Hughes*, 441 U.S. 347, 351 (1979). Thus, in the absence of a suspect classification or abridgement of a fundamental right, legislative line-drawing is held unconstitutional only when "the varying treatment of different groups or persons is so unrelated to the achievement of any combination of

legitimate purposes" that a court can only conclude that the legislature's actions were irrational. *Vance* v. *Bradley*, 440 U.S. 93, 97 (1979); *Parham* v. *Hughes*, 441 U.S. at 352.

Appellants assert, however, that the voting unit classifications embodied in Article 1118x are to be judged according to the "strict scrutiny" tests of *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969) and *Cipriano* v. *City of Houma*, 395 U.S. 701 (1969). The cited cases, as well as the relevant Fifth Circuit and Supreme Court precedent, do not support this assertion.

This Court has stated repeatedly that the "strict scrutiny" test only applies to legislation which makes classifications based on suspect criteria such as race, or abridges a fundamental right. *See, eg., San Antonio Independent School District* v. *Rodriguez*, 411 U.S. at 17. Appellants do not assert, nor could they justifiably contend, that they are members of a discrete and insular minority, historically shut off from access to the political processes which yield legislation. Nor do Appellants contend that the designation of "incorporated cities or towns which are wholly located within the perimeter of the outer boundary of the principal city" as a "unit of election", Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(f)(1) (Vernon Supp. 1982), is a suspect classification. There is, therefore, no allegation of a suspect classification which might trigger the application of the "strict scrutiny" test.

There also has been no abridgement of a fundamental right which would require the application of "strict scrutiny" in this case. *Kramer*, 395 U.S. 621, and *Cipriano*, 395 U.S. 701, both involved a *denial* of the right to vote. The application of the "strict scrutiny" test in these cases hinged on this denial, not on the mere fact that the litigation concerned voting. In *Kramer*, the Court expressly stated, "Our exacting examination is not necessitated by the subject of election; rather it is required because some resident citizens are permitted to participate and some are not." 395 U.S. at 629. Where, as here, no plaintiffs

were deprived of the right to vote, the "strict scrutiny" test does not apply.

Several circuit courts have applied the "rational basis" test in similar situations, where plaintiffs alleged vote dilution and sought to be classified as a separate voting unit. *See, eg., Creel* v. *Freeman*, 531 F.2d 286 (5th Cir. 1976), *cert. denied*, 429 U.S. 1066 (1977). The court in that case upheld a state statute which required residents of the cities of Jasper and Carbon Hill in Walker County, Alabama, to vote with other residents of the county in a single voting unit. The court held that the statute was neither irrational nor wholly unrelated to a legitimate objective. 531 F. 2d at 288. *See also Cantwell* v. *Hudnut*, 566 F.2d 30 (7th Cir. 1977), *cert. denied*, 439 U.S. 1114 (1979); *Clark* v. *Town of Greenburgh*, 436 F.2d 770 (2d Cir. 1971); *Phillips* v. *Beasley*, 78 F.R.D. 207 (N.D. Ala. 1978).

Finally, in *Lockport*, 430 U.S. at 266, the Supreme Court indicated that, for purposes of equal protection analysis, referendum elections, such as the METRO confirmation and tax authorization election challenged here, are to be distinguished from elections of legislative representatives. The Court wrote:

> The equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance . . . in analyzing the propriety of recognizing distinctive voter interests in a "single shot" referendum. In a referendum, the expression of voter will is direct, and there is no need to assure that the voter's views will be adequately represented through their representatives in the legislature. . . .

Id. This Court has never recognized a fundamental right to vote as a separate voting unit in a referendum election sufficient to trigger application of the "strict scrutiny" test. Appellants' reliance on representative election cases, such as *Dunn* v. *Blumstein*, 405 U.S. 330 (1972), *Evans* v. *Cornman*, 398 U.S. 419 (1970), *Hadley* v. *Junior College District*, 397 U.S. 50 (1970), *Williams* v. *Rhodes*, 393 U.S. 23 (1968), *Reynolds* v. *Sims*, 377

U.S. 533 (1964), and *Locklear* v. *North Carolina State Board of Elections*, 514 F.2d 1152 (4th Cir. 1975), is as misplaced as their reliance on cases such as *Hill* v. *Stone*, 421 U.S. 289 (1975), *City of Phoenix* v. *Kolodziejski*, 399 U.S. 204 (1970), *Kramer*, 395 U.S. 621, and *Cipriano*, 395 U.S. 701, in which plaintiffs were deprived of their right to vote. Where, as in this appeal, there is no suspect classification, there has been no denial of the right to vote, and the election is a "single-shot" referendum, the "strict scrutiny" test simply does not apply; rather, the "rational basis" test traditionally applied to legislative classifications governs.

C. The Classification of Election Units Established by Article 1118x is Reasonable and, Therefore, Does Not Violate the Equal Protection Clause

The Texas Legislature designated three classes of voters which would be allowed to confirm or reject the creation of METRO. The first election unit included the principal city, Houston, and all incorporated areas wholly within the boundaries of the principal city. Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(f)(1) (Vernon Supp. 1982). Qualified voters in this principal voting unit were given the power to veto the creation of METRO. *Id.* § 5(g). Humble was part of this principal voting unit. The second class was designated as a maximum of five voting units created in unincorporated areas by the Commissioners' Court of each county included in the METRO District. *Id.* § 5(c),(f)(2). The third class consisted of all other incorporated areas located wholly within the initial limits of the METRO District, but not wholly within the principal city. *Id.* § 5(f)(3). Qualified voters in election units other than the principal voting unit could not block creation of METRO; they could only exclude their respective territories from the METRO District. *Id.* § 5(g). Each voter within each election unit had one vote.

The rational basis for this legislative line-drawing is readily apparent. The Legislature could have reasonably concluded that

the problems it hoped to alleviate — concentration of people and motor vehicles in expanding metropolitan areas, air pollution, increased dangers to the health and welfare of affected persons, serious congestion on traffic arteries with a resulting retardation of mobility, and damage to and deterioration of property, the economic life of the area, and the quality of life of the area's citizens, *Id.* § 1 — occur primarily in the incorporated areas within the perimeter of the outer boundaries of the principal city, rather than in either the less populated unincorporated areas or the incorporated areas outside that perimeter. It could also have reasonably determined that METRO would be impotent and of minimal effect without the participation of the area in which the concentration of people and vehicular traffic is the greatest. Further, the Legislature could have reasonably decided that a negative vote from the principal election unit would effectively nullify its efforts to attack the problems inherent in persons and vehicles converging on the principal city each day. Finally, it could have reasonably determined that the participation of outlying or sparsely populated areas in the METRO District was less crucial to the success of METRO because they contributed to the problems articulated above to a lesser extent than did the principal voting unit.

A rational basis exists for different treatment of the individual voting units within METRO and, therefore, the statute must be upheld.

D. Appellants Have Not Demonstrated Any Discrimination Vis-A-Vis Other Areas

Appellants claim that residents of Humble, simply because they reside in Humble, must be treated differently than residents of Houston and other voters within the principal voting unit. Appellants seek to compare the statute's treatment of residents of Humble with its treatment of residents of three other types of voting units.

First, Appellants assert that they were discriminated against because enclave areas which are not incorporated did not vote in the principal voting unit. Article 1118x provides that unincorporated areas both within and without the perimeter of the outer boundaries of Houston are included in election units designated by the Commissioners Court of Harris County. Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(c),(f)(2) (Vernon Supp. 1982). This provision reflects the Legislature's determination that residents of less populous unincorporated areas may have different interests in mass transit than the residents of incorporated municipalities. There is certainly nothing irrational about creating voting units comprised of those unincorporated areas.

Appellants also assert that Humble was discriminated against vis-a-vis the Cities of Galena Park and Jacinto City. Here, Appellants attempt to assert that Galena Park and Jacinto City are located within the boundaries of Houston. This challenge concerns the construction of state law, which authorizes cities to create navigation and wharfage districts. Tex. Rev. Civ. Stat. Ann. arts. 1183-87 (Vernon 1963). Further, as noted above, the trial court held unequivocally that Jacinto City and Galena Park are not located within the outer boundaries of Houston. Consequently, those cities voted as separate voting units, as required by Tex. Rev. Civ. Stat. Ann. art. 1118x § 5(f)(3).

Third, Appellants assert that the fact that cities outside the perimeter of the outer boundary of Houston voted as separate units evidences invidious discrimination against Humble. Appellants' argument is incongruous. They first assert that "the weight of every voter in each unit was equal." Two sentences later they assert that "there is no equality or uniformity in the twenty-three city election units and the five unincorporated area units." Jurisdictional Statement, pp. 18-19. Appellants' confusion springs from a misguided attempt to apply the constitutional requirement of equal voting units in representational elections in the context of a voter referendum. There is no

constitutional requirement that election units be equal in elections where the voters' will is expressed directly, rather than through elected representatives. *Lockport*, 430 U.S. at 266. Further, there is nothing irrational about a voting system whereby cities located in the vicinity of a metropolitan area but outside the boundaries of the principal city are permitted to vote as separate election units. As the opinion of the Court of Appeals below stated:

> Although Appellants may have preferred that the legislature draw the line more strictly to exclude Humble or more leniently to include cities outside Houston's city limits, Appellants' dissatisfaction is not grounds for invalidating the statute if the class which included Humble is constitutionally justifiable.

City of Humble v. *Metropolitan Transit Authority*, 636 S.W.2d 483, 491 (Tex. App. — Austin 1982, writ ref'd n.r.e.), Jurisdictional Statement at 13a.

Finally, Appellants attempt to assert that differences between Article 1118x, authorizing creation of a metropolitan transit authority, and Article 1118y, authorizing creation of a regional transportation authority, indicate invidious discrimination.

First, Article 1118y was not passed until after this suit was filed by Appellants. The Legislature passed Article 1118y effective August 27, 1979. *See* Tex. Rev. Civ. Stat. Ann. art. 1118y (Vernon Supp. 1982). This suit was filed on December 7, 1978. Appellants' pleadings in the trial court did not raise any claim of discrimination between metropolitan areas operating under Article 1118x and metropolitan areas operating under Article 1118y. The opinion of the Court of Appeals does not address this claim of discrimination. Therefore, it is not properly before this Court.

Further, Article 1118y allows the creation of a regional transit authority in a metropolitan area with two principal cities. Tex. Rev. Civ. Stat. Ann. art. 1118y (Vernon Supp. 1982). Different

considerations apply to the creation of a transit authority for a metropolitan area with two primary hubs, two county governments and two major city governments in the area. Article 1118x was designed to apply to areas with one principal city, such as Houston, and specifically exempted bicounty metropolitan areas. Tex. Rev. Civ. Stat. Ann. art. 1118x § 15 (Vernon Supp. 1982). Therefore, the Legislature had a rational basis for making distinctions between the two statutes.

It should again be noted that Appellants are not asserting any denial of their individual voting rights, which were equal to all other voters in that district, but are asserting additional voting rights that allegedly spring from the existence of the municipality of Humble within the primary voting unit provided for in Article 1118x. Appellants have not shown that these asserted rights present a substantial question.

E. Appellants' Asserted Right to an Elected Board of Directors is Without Merit

Appellants urge this Court to decide whether the equal protection clause of the fourteenth amendment to the United States Constitution requires the election of the METRO Board, asserting in their Jurisdictional Statement that "[a]t issue is the question reserved in *Sailors* v. *Board of Education of Kent*, 387 U.S. 105 (1967)." (p.23). Rather than presenting the question reserved in *Sailors*, the issue on appeal to this Court is controlled by that decision.

In *Sailors*, the appointment to a county school board of members chosen by the boards of directors of the school districts within the county was challenged by the plaintiff as being a violation of the equal protection clause and the "one man, one vote" principle of *Reynolds* v. *Sims*, 377 U.S. 533 (1964). This Court held that "since the choice of members of the county school board did not involve an election and since none was required for these non-legislative offices, the principle of 'one man, one vote' has no relevancy." 387 U.S. at 111. Justice

Douglas' opinion stated that, "[w]e need not decide at the present time whether a state may constitute a local legislative body through the appointive rather than the elective process." 387 U.S. at 110–11. The Court has continued to leave the question open. *See, e.g., Rodriguez* v. *Popular Democratic Party*, 102 S.Ct. 2194, 2200 n.9 (1982). However, that question is not presented in this appeal.

i) The METRO Board is not a legislative body

Appellants' assertion that this appeal presents the question reserved in *Sailors* is based upon the premise that the METRO Board is a legislative body. However, Appellants cite no evidence or authority for this assertion. In fact, the case law demonstrates that the METRO Board is not a legislative body.

Appellants' rely heavily on METRO's alleged taxing authority as grounds for requiring direct election of the METRO Board. It should first be noted, however, that the METRO Board is not empowered to levy a tax of any kind by its own authority. Section 11A(b) of Article 1118x provides as follows:

> No tax of any kind may be levied and collected by the Board until a proposition proposing the tax has first been submitted to and approved by a majority of the qualified electors of the authority voting at an election held by the Board for that purpose.

Tex Rev. Civ. Stat. Ann. art. 1118x § 11A(b) (Vernon Supp. 1982). This section further forbids any subsequent increase in a tax unless it is approved at an election. Consequently, the METRO Board itself has no powers of taxation. Taxes may only be levied by the voters themselves.

Furthermore, in *Sailors*, this Court upheld the constitutionality of an appointed board which had the power to levy taxes. The Court specifically noted that the board had the authority to levy taxes, 387 U.S. at 110 n.7, but held that there was no constitutional prohibition against such a non-legislative board being appointed rather than elected.

Appellants also assert that the authority granted to METRO to adopt rules and enforce them through penalties requires that the METRO Board be elected. However, this authority is limited in scope to reasonable rules and regulations concerning areas within the discrete subject matter of the transit authority. Tex. Rev. Civ. Stat. Ann. art. 1118x § 13 (Vernon Supp. 1982). Such limited authority does not transform the METRO Board into a legislative body. *See Byrd* v. *City of San Antonio*, 587 F.2d 184 (5th Cir. 1979). Moreover, there is no evidence in the record that the METRO Board has ever attempted to establish penalties under section 13, and, even if section 13 were an unconstitutional grant of power to METRO, the remedy would be severance of that section, not dissolution of METRO. Tex. Rev. Civ. Stat. Ann. art. 1118x § 18 (Vernon Supp. 1982).

Finally, the Fifth Circuit has held that an almost identical governmental entity, the Metropolitan Atlanta Rapid Transit Authority ("MARTA"), is not a legislative body. *City of Atlanta* v. *Metropolitan Atlanta Rapid Transit Authority*, 636 F.2d 1084, 1089 (5th Cir. 1981). Like METRO, MARTA was constituted as a distinct corporate entity by the Georgia Legislature, and authorized to operate and administer a transit system for the Atlanta metropolitan area. The plaintiffs there challenged the appointment of state officials to the MARTA Board of Directors, claiming that the state had denied them equal protection under the laws. The Fifth Circuit, however, held:

> We find no federal or state constitutional provision that guarantees the citizens of Atlanta a certain proportional representation on the MARTA Board. MARTA is a creature of Georgia law established by state statute. As the creator of MARTA, the Georgia General Assembly was free to decide the number of representatives from each government unit participating in the system and whether the Board members would be appointed or elected.
>
> * * * *

> Under Georgia law members of the MARTA Board are either appointed or serve ex-officio. None are elected by popular vote. Additionally, the MARTA Board can properly be characterized as an administrative body which does not exercise traditionally legislative powers. Under *Sailors* it was within the legislature's discretion to choose to appoint the MARTA Board rather than having its members popularly elected. This method of selecting members renders the one man-one vote system inapplicable.

636 F.2d at 1089.

This precedent demonstrates that the METRO Board should not be considered a legislative body. Therefore, since the METRO Board is an appointed, non-legislative local body, this appeal is controlled by *Sailors*. That decision refutes Appellants' assertion that the METRO Board should be elected.

ii) Regardless of the legislative/administrative characterization of the METRO Board, the "one man, one Vote" principle does not apply to such a body

Appellants' Jurisdictional Statement contains no authority which supports their contention that the election of the METRO Board is required by the equal protection clause. Appellants improperly cite the line of voting rights cases extending back to *Reynolds* v. *Sims*, 377 U.S. 533 (1964) in support of their position. In *Reynolds* the plaintiffs alleged that the Alabama legislature's failure to reapportion itself in accordance with population changes over the 60 year period from 1900 to 1960 denied them equal protection of the law in violation of the Alabama Constitution and the fourteenth amendment to the United States Constitution. This Court held that the equal protection clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. 377 U.S. at 576. However, the "one man, one vote" principle of *Reynolds* v. *Sims* simply does not apply to appointed office-holders.

Appellants assert, however, that the "one man, one vote" principle should apply because the METRO Board is allegedly a

legislative body. Virtually every court that has addressed the issue has abandoned the legislative/administrative distinction in deciding whether the proportional representation principle of the equal protection clause applies to appointed local governmental bodies. In *Hadley* v. *Junior College District*, Justice Black wrote:

> It has also been urged that we distinguish for apportionment purposes between elections for 'legislative' officials and those for 'administrative' officers. Such a suggestion would leave courts with an equally unmanageable principle since governmental activities 'cannot easily be classified in the neat categories favored by civics texts.' [*Avery* v. *Midland County*, 390 U.S. 474, 482, 88 S.Ct. 1114, 1119 (1968)] and it must also be rejected.

397 U.S. 50, 55-56 (1970) (Citation omitted.) *See also Hoots* v. *Pennsylvania*, 672 F.2d 1124, 1130 (3d Cir. 1982) ("*Sailors* v. *Board of Education* . . . did address the question whether the principle of proportional representation has any bearing on non-elective offices, and held that it does not"); *Oakes* v. *Board of Trustees*, 385 F. Supp. 392, 394 (N.D. Miss. 1974) ("in all its decisions on the one person, one vote issue, the Supreme Court has never suggested that the principle of equal representation should be extended to appointed governmental officials or agencies."); *Rosenthal* v. *Board of Education*, 385 F. Supp. 223, 226 (E.D. N.Y. 1974) ("once it is determined that the members of the Central Board are not selected by popular election, there is no need to determine whether they perform functions that may be better defined as 'legislative' or 'administrative' "), *aff'd* 420 U.S. 985 (1975); *People ex rel. Younger* v. *County of El Dorado*, 487 P.2d 1193, 1209 (Cal. 1971) ("We think that the true meaning of *Sailors* and *Hadley* is that the legislative or administrative nature of the activities performed by an officer is irrelevant; if the officer is elected, 'one person, one vote' applies. If he is appointed, that principle does not apply."). Thus, it is clear that regardless of the characterization of the

METRO Board, it is an appointed body to which the proportional representation principle does not apply.

A cursory examination will reveal that all of the cases cited in Appellants' Jurisdictional Statement involved elections. *See Ball* v. *James*, 451 U.S. 355 (1981) (election of directors of electric utility and water delivery system); *Holt Civic Club* v. *City of Tuscaloosa*, 439 U.S. 60 (1978) (municipal election); *Associated Enterprises, Inc.* v. *Toltec Watershed Improvement District*, 410 U.S. 743 (1973) (referendum authorizing creation of watershed improvement district); *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973) (election of water storage district board of directors); *Hadley* v. *Junior College District*, 397 U.S. 50 (1970) (election of junior college district trustees); *Avery* v. *Midland County*, 390 U.S. 474 (1968) (election of commissioners to County Commissioners Court); *Benner* v. *Oswald*, 592 F.2d 174 (3d Cir. 1979) (election of Penn State University Board of Trustees), *cert. denied*, 444 U.S. 832 (1979); *Little Thunder* v. *South Dakota*, 518 F.2d 1253 (8th Cir. 1975) (election of county officials); *Bianchi* v. *Griffing*, 393 F.2d 457 (2d Cir. 1968) (election of Suffolk County Board of Supervisors). Appellants' cited authority has no bearing on whether an election is required.

Appellants fail to cite any authority (other than *Sailors*) which involves the legislatively-authorized appointment of state or local officials. No court has recognized a constitutional requirement that such officers be elected rather than appointed. Thus, for example, in *Wallis* v. *Blue*, 263 F. Supp. 965 (N.D. Ga. 1967), the system established by a constitutional referendum authorizing the county Grand Jury to choose members of the county board of education was challenged. The court held:

> There is no federal requirement intended to compel a state to elect any of its officers or agents through popular vote of the people. *Fortson* vs. *Morris*, 385 U.S. 231 (1966). . . . so long as the method is chosen by the people, and the method does not constitute an unreasonable delegation of power, it

> is sufficient .... To require otherwise would subject the people to endless objections at every level. In general, the choice of means of such a selection is left to the people either directly or through its legislature .... No federal right exists to invoke the 'voting case' requirements so as to nullify the selection of the present in Carroll County.

263 F. Supp. at 969. *See also Grivetti* v. *Illinois State Electoral Board*, 335 F. Supp. 779 (N.D. Ill. 1971), *aff'd* 406 U.S. 913 (1972) (appointment of Illinois Redistricting Commission members does not violate equal protection clause); *Hinton* v. *Threet*, 280 F.Supp. 831, 840 (M.D. Tenn. 1968) ("As far as the Federal Constitution is concerned, a state may refuse to set up an elective process for the selection of city or county officials.").

Appellants attempt to meet this argument by stating in their Jurisdictional Statement that:

> Inherent in the one person, one vote principle is the premise that a legislative official must be elected. If this principle applies only to governing bodies required by a state to be elected, the principle can be effectively emasculated by a state providing for the Legislature and all legislative bodies of political subdivisions to be appointed.

(p.23). This argument is not persuasive. First, *Hadley* and subsequent cases have eliminated the legislative/administrative distinction only so far as the proportional representation principle of the equal protection clause applies to local governmental bodies, not as it applies to state legislatures with policy-making authority over an entire state. Therefore, it does not necessarily follow that a state may constitutionally provide that its legislature shall be appointed rather than elected.

Furthermore, that question is not presented here. The State of Texas has vested its legislative power in a Senate and a House of Representatives, both of which are popularly elected. Tex. Const. art. III, §§ 1-3. This Court need not consider whether Texas could provide for the appointment of its legislature and all legislative bodies and political subdivisions. *See Rodriguez* v.

Popular Democratic Party, 102 S.Ct. 2194, 2199 n.8, 2200 n.9 (1982) (constitutionality of abolishing legislative branch of government in Puerto Rico not presented where Puerto Rico has in fact established a popularly elected legislature).

iii) Assuming the "one man, one vote" principle is inapplicable, there is no constitutional requirement that the METRO Board be elected

Appellants have only challenged the appointment of the METRO Board on the basis of the fourteenth amendment. The fourteenth amendment prohibits a state from denying to any person the equal protection of the laws. U.S. Const. amend. 14 § 1 As a matter of logic, a person can be deprived of the equal protection of the laws only if the state treats that individual differently from some other individual. Inherent in the concept of inequality is the concept of differentiation. Thus, where there is no classification, discrimination, or differentiation, there can be no unequal treatment. This principle is particularly applicable here. As noted by the Texas Court of Appeals below:

> Initially, appellants are advancing an improper constitutional argument. The basis for an equal protection violation is that similarly situated individuals are treated differently by the government. See *American Constitutional Law* § 16-1, at 993 (1978). While appellants may believe the appointment scheme violates some constitutional command, no cognizable equal protection violation exists under this aspect of art. 1118x because all citizens within the transit authority are treated equally, *i.e.*, no one has the right to elect a director. No impermissible statutory discrimination exists because *all* persons affected by the statute are deprived of the right appellants assert.

636 S.W.2d at 491, Jurisdictional Statement at 14a. *See also Concerned Citizens* v. *Pine Creek Conservancy District*, 473 F. Supp. 334, 339 (S.D. Ohio 1977) (where all voters treated alike, no equal protection violation); *Stokes* v. *Fortson*, 234 F. Supp. 575, 577 (N.D. Ga. 1964) (if every person's vote counts the

same, no denial of equal protection of the law). Thus, it is clear that the equal protection clause is not violated by the appointment of a body such as the METRO Board.

Furthermore, the right to have the METRO Board elected is not required by the constitutional guarantee of a republican form of government, U.S. Const. art. IV § 6. Questions concerning the proper construction of a "republican form of government" have traditionally been regarded as political questions that are not the proper subject of judicial decisions. *See Luther* v. *Borden*, 48 U.S. (7 How.) 1 (1849). That guarantee should not be regarded as the source of a right to vote for local bodies such as the METRO Board. *See Holshouser* v. *Scott*, 335 F. Supp. 928, 934 (M.D. N.C. 1971). *See generally* Note, *Reapportionment*, 79 Harv. L.Rev. 1228, 1241-43 (1966).

Even at the state-wide, rather than the local level, this Court has consistently refused to find any Constitutional requirement that a particular governmental position be elected. The Court has noted, "the right to vote, *per se* is not a constitutionally protected right," *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 35 n.78 (1973). In *Fortson* v. *Morris*, 385 U.S. 231 (1966), the Court upheld the validity of a Georgia constitutional provision that provided for the election of that state's governor by the state legislature when no gubernatorial candidate received a majority of the votes cast in a general election.

The Court has also upheld the constitutional validity of a New York law which allowed the governor of New York to appoint a new United States Senator when a vacancy arose less than sixty days prior to the regularly scheduled spring primary. *Valenti* v. *Rockefeller*, 393 U.S. 405 (1969).

More recently, this Court in *Rodriguez* v. *Popular Democratic Party*, 102 S.Ct. 2194 (1982) held that a Puerto Rico statute which allowed the vacancy caused by the death of a representative in the Puerto Rico House of Representatives to be

filled by a person appointed by the political party of the deceased representative did not violate the U.S. Constitution. The appellants in that case asserted that all the qualified electors had a right protected under the Constitution to vote for the members of the legislature. The Court noted, "[t]he source of this purported right is somewhat unclear," 102 S.Ct. at 2199 n.8, and held there was simply no constitutional provision that required that a legislative vacancy be filled by election. 102 S.Ct. at 2201. *See also Lynch* v. *Illinois State Board of Elections*, 682 F.2d 93 (7th Cir. 1982) (no violation by appointment of replacement to fill vacancy in elective municipal office).

In sum, Appellants have not demonstrated that there is a constitutional requirement in the fourteenth amendment or elsewhere in the Constitution that the METRO Board be elected. This issue does not present a substantial federal question requiring consideration by this Court.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Appellee moves to dismiss this appeal.

Respectively submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 1983, three copies of this Motion to Dismiss were deposited in a United States Post Office or mailbox, with first class postage prepaid, addressed to Robert L. Burns, counsel of record for Appellants, Wilson Archer, et al., at his post office address, Ten Ten Lamar Building, Suite 1111, Houston, Texas 77002, in accordance with Sup. Ct. R. 28.3.

APPENDIX A

No. 283,604

CITY OF HUMBLE, ET AL. vs. METROPOLITAN TRANSIT AUTHORITY, ET AL.	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 53RD JUDICIAL DISTRICT

(November 10, 1980)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-captioned cause came on for trial before the Court on June 18, 1980. All parties and their attorneys were present. After considering the pleadings, the evidence, the argument and briefs from counsel, the Court, in response to a request from Plaintiffs, makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. In September 1977, the governing body of the City of Houston instituted proceedings to create a rapid transit authority under Tex. Rev. Civ. Stat. Ann. art. 1118x.

2. In October 1977, the governing body of the City of Houston created a rapid transit authority pursuant to Art. 1118x.

3. The City of Houston, Texas, had a population of not less than 1,200,000 inhabitants, according to the 1970 Federal Census at the time of the creation.

4. The area within the boundaries of the rapid transit authority as created by the governing body of the City of Houston had a population density of greater than 250 persons per square mile at the time of the creation.

5. The City of Humble, Texas, was located wholly within the perimeter of the outer boundary of the City of Houston at the time of the creation.

6. In July 1978, the board of directors of the rapid transit authority ("Metropolitan Transit Authority" or "MTA") adopted an order calling for an election confirming its creation and authorizing a sales and use tax for its benefit not to exceed one percent (1%).

7. Five (5) election units were created in the unincorporated areas of Harris County by the Commissioners Court of Harris County.

8. All incorporated areas within the perimeter of the outer boundary of the City of Houston voted as one election unit ("enclave cities").

9. Each incorporated town or city within the authority which was not located within the perimeter of the outer boundary of the City of Houston voted as a separate election unit.

10. The confirmation and tax authorization election was held in August 1978.

11. The election unit comprised of the City of Houston and its enclave cities voted to confirm the creation of MTA and authorize the proposed tax.

12. Two of the five unincorporated election units voted to confirm the creation of MTA and authorize the proposed tax.

13. The cities of El Lago, Friendswood, Katy, Missouri City, Taylor Lake Village and Waller voted to confirm the creation of MTA and authorize the proposed tax.

14. The Comptroller of the State of Texas has been collecting the Sales and Use Tax pursuant to Article 1118x and the 1978 confirmation and tax authorization election on receipts from taxable transactions after October 1, 1978.

15. Plaintiff Wilson's Superette, Inc. has been paying the Sales and Use Tax to the Comptroller on receipts from the sale of goods sold after October 1, 1978.

16. The City of Humble was included in the election unit comprised of the incorporated areas within the perimeter of the outer boundary of the City of Houston.

17. The individual plaintiffs in this lawsuit voted in the 1978 confirmation and tax election.

18. The vote of each qualified voter in the City of Humble was given the same weight as the vote of every other voter in the election unit comprised of the City of Houston and its enclave cities.

19. The cities of Jacinto City and Galena Park, Texas, voted as separate election units.

20. The cities of Jacinto City and Galena Park are not wholly located within the perimeter of the outer boundary of the City of Houston.

21. The boundaries of the five election units for the unincorporated areas of Harris County, were drawn so as to define into separate units areas that had common travel patterns, common commercial and trade patterns, shared transportation and mass transit needs and generally shared interests of all kinds.

22. The concentration of vehicles and the resulting lack of mobility and the existing pollution in major metropolitan areas in Texas and particularly in the Houston metropolitan area adversely affect the economy of the State of Texas.

23. The concentration of motor vehicles and the resulting lack of mobility and the existing pollution in major metropolitan areas in Texas adversely affect the health and welfare of the citizens of those areas and the economic life of those areas.

24. There exists a compelling need to remedy the vehicular congestion and concentration in major metropolitan areas in Texas.

25. As population in a metropolitan area increases, vehicular concentration and congestion tend to increase.

26. As population density in an area increases, vehicular concentration and congestion tend to increase.

27. Cities with a population of not less than 600,000 population generally have a greater need for a mass transit system than cities with a population of less than 600,000.

28. Metropolitan areas with a population density of not less than 250 persons per square mile generally have a greater need for a mass transit system than areas with a lower population density.

29. Unique mass transportation problems arise in a metropolitan area with two large primary population centers, and these unique problems require substantially different remedies than those which are suited to a metropolitan area with only one primary population center.

30. In order for a mass transit system to operate effectively in the Houston metropolitan area, it is necessary that the City of Humble and other incorporated areas within the perimeter of the outer boundary of the City of Houston be included in the area served by and supporting the mass transit system.

31. The failure to include the enclave cities within the principal election unit could have resulted in a "checkerboard" service area for the authority. Such checkerboarding in the area of greatest need, i.e., the City of Houston and its enclave cities, would occasion operating inefficiencies and inequities in matching the authority's services with the authority's taxpayers.

32. The boundaries of MTA as described in Houston Ordinance Nos. 77-1780 and 77-1946 and the order of the MTA Board canvassing and declaring the election, are sufficiently described so that they can be located on the ground.

33. Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron are residents of the City of Humble. Plaintiff Wilson's Superette, Inc. is a Texas corporation operating in the City of Humble.

34. Plaintiffs have not incurred any special burden as a result of the allegedly improper creation of voting units in unincorporated areas of Harris County.

35. Plaintiffs have not incurred any special burden as a result of the cities of Jacinto City and Galena Park not being included in the voting unit comprised of Houston and its enclave cities.

36. Plaintiffs have not incurred any special burden as a result of Houston City Ordinance No. 78-1413.

37. Plaintiffs have not incurred any special burden as a result of the alleged lack of ascertainability of the MTA boundaries.

CONCLUSIONS OF LAW

1. The Texas Legislature has the power under the Texas Constitution to authorize the creation of a rapid transit authority with power to levy taxes pursuant to the terms of Article 1118x.

2. The Texas Constitution neither expressly nor impliedly prohibits the creation of a rapid transit authority with power to levy taxes pursuant to the terms of Article 1118x.

3. Article 1118x applies both to metropolitan areas which currently meet the population and density requirements and to metropolitan areas which meet those requirements in the future.

4. Article 1118x is a general law and therefore does not violate Article 3, § 56 of the Texas Constitution.

5. The tax authorized by Article 1118x is levied by general law and for public purposes and therefore does not violate Article 8, § 3 of the Texas Constitution.

6. The Comptroller of the State of Texas is legally authorized to collect and administer the sales and use tax authorized by Article 1118x.

7. The captions of the 1973, 1975 and 1977 Acts give fair and reasonable notice of the provision of those Acts.

8. The captions of the 1973, 1975 and 1977 Acts do not violate Article 11, § 35 of the Texas Constitution.

9. Article 1118x provides reasonable standards, procedures and guidelines to be followed in determining whether a rapid transit authority shall be created and what the initial boundaries of that authority shall be.

10. Article 1118x provides the Commissioners Court with reasonable guidelines for creating separate voting units in unincorporated areas of counties included within the initial boundaries of the rapid transit authority.

11. The findings in Section 1 of Article 1118x, which state the problems sought to be remedied by the statute, provide reasonable guidelines for creating and administering a rapid transit authority.

12. Article 1118x does not unlawfully delegate legislative power to the governing body of the principal city in a metropolitan area.

13. Article 1118x does not unlawfully delegate legislative power to the Commissioners Court in counties included within the initial territory of a rapid transit authority.

14. Article 118x does not unlawfully delegate legislative power to the transit authority board.

15. Permitting voting units to determine whether a rapid transit authority will be created within such units is not an unlawful delegation of legislative power to the qualified voters within those units.

16. The population density requirement of § 2 of Article 1118x requires an average population density of 250 persons per square mile throughout the metropolitan area, not a density of 250 persons in each included square mile.

17. Article 1118x is not void for vagueness.

18. Article 1118x does not infringe upon the governmental powers of home-rule cities in violation of Article 11, § 5 of the Texas Constitution.

19. The inclusion of the City of Humble within the MTA does not impair exercise of that city's powers of annexation.

20. MTA was validly created pursuant to Article 1118x.

21. The Sales and Use Tax was validly authorized pursuant to Article 1118x.

22. The Houston metropolitan area is not a bi-county metropolitan area as defined by § 15 of Article 1118x, notwithstanding

the fact that the City of Houston extends into more than one county.

23. Permitting the cities of Galena Park and Jacinto City to vote as separate election units was in accordance with Article 1118x.

24. The Harris County Commissioners Court validly created five units of election in the unincorporated areas of Harris County in accordance with Article 1118x.

25. Houston Ordinance No. 78-1413 was a valid exercise of authority pursuant to Article 1118x.

26. The boundaries of the MTA are defined with sufficient clarity so as to be legally valid.

27. The definition of a metropolitan area in Article 1118x does not violate Article 1, § 3 of the Texas Constitution.

28. The creation of the three types of voting units in Article 1118x does not violate Article 1, § 3 of the Texas Constitution.

29. The delegation of authority to the Commissioners Court to create election units in Article 1118x does not violate Article 1, § 3 of the Texas Constitution.

30. The governing body of the MTA is an administrative body, not a legislative body. The MTA is a governmental unit that has a narrow, single purpose — the providing of mass transit services in a limited area of the State of Texas.

31. The appointment of MTA board members under Article 1118x does not violate Article 1, § 3 of the Texas Constitution.

32. The appointment of MTA board members under Article 1118x does not violate the 14th Amendment of the United States Constitution.

33. The State of Texas has a legitimate interest in the alleviation of vehicular congestion and resulting lack of mobility and alleviating pollution in metropolitan areas.

34. Article 1118x provides a reasonable mechanism for remedying vehicular congestion and resulting lack of mobility and alleviating pollution in metropolitan areas.

35. The inclusion of the City of Humble in the voting unit comprised of the City of Houston and its enclave cities does not violate Article 1, § 3 of the Texas Constitution.

36. The inclusion of the City of Humble in the voting unit comprised of the City of Houston and its enclave cities does not deprive the voters and residents of the City of Humble of equal protection of the law under the 14th Amendment of the United States Constitution.

37. Plaintiffs do not have standing to attack the creation of voting units in unincorporated areas of Harris County.

38. Plaintiffs do not have standing to challenge the exclusion of Galena Park and Jacinto City from the voting unit comprised of the City of Houston and its enclave cities.

39. Plaintiffs do not have standing to challenge the exclusion of Plum Grove from the MTA.

40. Plaintiffs do not have standing to challenge the alleged lack of ascertainability of the MTA boundaries.

41. This Court has no jurisdiction to consider Plaintiff's allegations attacking the specific procedures followed in creating MTA the legality of acts taken by the MTA following its creation and other defects in the establishment of the MTA except in a *quo warranto* proceeding.

42. The suit brought by Plaintiffs is not a *quo warranto* proceeding, notwithstanding the fact that the Comptroller of the State of Texas was named as a party defendant.

43. All findings of fact more properly denominated conclusions of law are hereby adopted as conclusions of law and all conclusions of law more properly denominated findings of fact are hereby adopted as findings of fact.

DONE this 10th day of November, 1980, at Austin, Texas.

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Judge Presiding

APPENDIX B
No. 283,604

CITY OF HUMBLE, ET AL., *Plaintiffs,* v. METROPOLITAN TRANSIT AUTHORITY, ET AL., *Defendants.*	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 53RD JUDICIAL DISTRICT

(November 25, 1980)

ADDITIONAL AND SUPPLEMENTAL FINDINGS OF FACT

Pursuant to the request of the Plaintiffs for additional and supplemental findings of fact and conclusions of law, the Court makes the following Findings of Fact:

FINDINGS OF FACT

1. The area within Harris County Election Unit No. 2, located wholly within the perimeter of the outer boundary of the City of Houston in August 1978, includes portions of census tracts 246, 248 and 249 as shown on Plaintiffs' Exhibit No. 28.

2. The population of such portion of Harris County Election Unit No. 2 in 1970 was 3,921 inhabitants, according to the 1970 Federal Census.

3. The population of such portion of Harris County Election Unit No. 2 in 1978 was estimated to be 20,407 inhabitants.

4. The area of Harris County Election Unit No. 3 located wholly within the perimeter of the outer boundary of the City of Houston in August, 1978, includes census tracts 224, 228, 239, 236, 238, and portions of tracts 247 and 237, as shown on Plaintiffs' Exhibit No. 28.

5. The population of such portion of Harris County Election Unit No. 3 in 1970 was 28,218 inhabitants, according to the 1970 Federal Census.

6. The population of such portion of Harris County Election Unit No. 3 in 1978 was estimated to be 55,921 inhabitants.

7. The population in 1970, according to the Federal Census and estimate for 1978 of the incorporated areas located wholly within the perimeter of the outer boundary of the City of Houston were:

Cities	1970	Estimated 1978 (Year-End)
Houston	1,232,802	1,693,206
Bellaire	19,009	16,935
West University Place	13,317	12,608
Southside Place	1,466	1,382
Humble	3,278	6,568
Villages		
Bunker Hill	3,977	4,296
Hedwig	3,255	3,915
Hilshire	627	750
Hunters Creek	3,959	5,561
Piney Point	2,548	2,841
Spring Valley	3,170	3,109

8. The population in 1970 and 1978, according to the Federal Census and estimate for 1970 and 1978, of the incorporated areas located outside the perimeter of the outer boundary of the City of Houston were:

Cities	1970	Estimated 1978 (Year-End)
Baytown	43,980	48,114
Deer Park	12,773	21,214
El Lago	949	3,500
Friendswood	7,433	8,850
Galena Park	10,479	9,329
Jacinto City	9,563	10,397
Jersey Village	765	3,297

Cities	1970	Estimated 1978 (Year-End)
Katy	2,596	4,309
La Porte	7,149	8,899
Lomax	893	2,964
Missouri City	4,136	13,520
Morgans Point	593	752
Nassau Bay	2,240	4,510
Pasadena	89,277	105,209
Pearland	6,444	12,234
Seabrook	3,811	5,760
Shoreacres	1,872	1,662
South Houston	11,527	12,996
Stafford	2,905	13,147
Taylor Lake Village	1,798	1,819
Tomball	2,734	3,817
Waller	1,123	1,365
Webster	2,231	3,108

9. The population in 1970 and 1978, according to the Federal Census and estimate for 1970 and 1978, of Harris County Election Units Nos. 1, 2, 3, 4, and 5 were:

	1970	Estimated 1978
#1	32,399	141,703
#2	105,529	317,323
#3	58,406	113,292
#4	22,963	38,391
#5	18,953	67,946

10. A majority of those persons voting in the election precincts which included the City of Humble voted against confirming creation of MTA and authorizing a sales and use tax.

11. The Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron voted against confirming creation of MTA and authorizing a sales and use tax.

12. The populations of the various election units at the time of the election were not equal.

13. The unique mass transportation problems that may arise in a metropolitan area with two large population centers include the fact that patterns of commuting are different from areas where there is a single large primary population center and also the problems of overlapping governmental units are increased.

14. Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron became subject to the MTA sales and use tax that a majority of those persons voting in the election precincts which included the City of Humble voted against.

15. The total annual income of MTA from sales and use tax would have been increased if the cities of Jacinto City and Galena Park had been included in the voting unit of the City of Houston.

Dated this 25th day of November, 1980, at Austin, Texas.

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Judge Presiding